

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**PHILLIP D. NEWBERRY,**

**Plaintiff,**

**v.**

**THE CITY OF GEORGETOWN and  
STEVE E. SIZEMORE**

**Defendants.**

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**CAUSE NO. EP-23-CV-118-KC**

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE**

On this day, the Court considered the above-captioned case. On March 21, 2023, Plaintiff initiated this case by filing several documents, including an Application to Proceed in District Court without Prepaying Fees or Costs (“IFP Motion”), ECF No. 1; an Application for Permission to File Electronically (“Application”), ECF No. 3; and a civil Complaint, ECF No. 1-1.

On March 23, 2023, the Court referred the IFP Motion to United States Magistrate Judge Leon Schydlower pursuant to 28 U.S.C. § 636(b)(1)(A). *See* Order 1, ECF No. 7. And the Court took Plaintiff’s Motion to File Electronically under advisement pending resolution of the IFP Motion. *Id.* Judge Schydlower issued a Report and Recommendation (“R&R”), ECF No. 8, recommending that the Court grant Plaintiff’s IFP Motion, but also that it dismiss his Complaint with leave to amend. *See* R&R 2–3.

Parties have fourteen days from service of a Report and Recommendation of a United

States Magistrate Judge to file written objections. *See* 28 U.S.C. § 636(b)(1)(C).<sup>1</sup> Over fourteen days have elapsed since Plaintiff was served with the R&R, and no objections have been filed. *See* Certified Mail Receipt, ECF No. 10.

When parties do not file written objections, courts apply a “clearly erroneous, abuse of discretion and contrary to law” standard of review to a report and recommendation. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (“[T]he ‘clearly erroneous, abuse of discretion and contrary to law’ standard of review . . . is appropriate . . . where there has been no objection to the magistrate’s ruling.”); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988) (“[A] party is not entitled to de novo review of a magistrate’s finding and recommendations if objections are not raised in writing by the aggrieved party . . . after being served with a copy of the magistrate’s report.”). After reviewing the R&R, the Court agrees with the Magistrate Judge’s proposed findings of fact and conclusions of law and finds that they are neither clearly erroneous nor contrary to law. *See Wilson*, 864 F.2d at 1221.

Accordingly, the Court **ADOPTS** the R&R, ECF No. 8, in its entirety, and **ORDERS** that Plaintiff’s IFP Motion, ECF No. 1, is **GRANTED**.

**IT IS FURTHER ORDERED** that all claims in Plaintiff’s Complaint, ECF No. 1-1, are **DISMISSED** without prejudice.

**IT IS FURTHER ORDERED** that Plaintiff is granted leave to file an amended complaint. If Plaintiff wishes to file an amended complaint, he must do so **on or before May 15, 2023**.

**IT IS FURTHER ORDERED** that Plaintiff’s Application for Permission to File

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<sup>1</sup> Federal district courts conduct de novo review of those portions of a report and recommendation to which a party has objected. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge . . . shall make a de novo determination of those portions of the report . . . to which objection is made . . .”).

Electronically, ECF No. 3, is **DENIED**. According to Plaintiff's Application, he does not have "[a] PDF reader and a PDF writer to convert word processing documents into PDF format." *Id.* But parties, including parties proceeding pro se, must file documents as PDFs in order to file them electronically.<sup>2</sup>

**SO ORDERED.**

**SIGNED this 17th day of April, 2023.**



KATHLEEN CARDONE  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> See *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases*, at 6, 10, U.S. Dist. Ct. for the W. Dist. of Tex. (Dec. 1, 2016), <https://www.txwd.uscourts.gov/wp-content/uploads/Attorney%20Application%20and%20Registration/Administrative%20Policies%20and%20Procedures%20for%20Electronic%20Filing%20in%20Civil%20&%20Criminal%20Cases.pdf>; see also Appl. (“[T]he only electronic format in which documents can be e-filed [is PDF format].”).